IN THE

Supreme Court of the United States.

OCTOBER TERM, A. D. 1899.

THE WABASH RAILROAD COMPANY,
Plaintiff in Error,
vs.
PETER TOURVILLE,
Defendant in Error.
No. 250.

In Error to the Supreme Court of the State of Missouri.

Filed April 4, 1899 (17,350).

STATEMENT.

On the 12th day of March, 1887, plaintiff, then a citizen and resident of the State of Illinois, executed a note to Alexander Flannigan, a lawyer, also living in that State, for the sum of $100, such note bearing interest at the rate of eight per cent. per annum. This note, and accrued interest thereon, amounted, on the 3d day of June, 1891, to the sum of $132, and at that time the only credit upon it was the sum of $15, paid June 7, 1887, by a relative of the plaintiff, leaving the sum of one hundred and seventeen dollars ($117), long past due

and wholly unpaid. In the meantime, the plaintiff had removed to St. Louis, Missouri, and was residing there with his family on said day. The plaintiff in error here, and defendant below, was then, as now, a consolidated railway corporation, duly and separately organized under the laws of the States of Michigan, Ohio, Indiana, Illinois, and Missouri, having business offices and agents upon whom legal process could be served in all of said States. At said time, the defendant in error here, and plaintiff below, was in the employ of the defendant in St. Louis, Missouri, as before stated. On the 3d day of June, 1891, Flannigan instituted attachment proceedings against the plaintiff before a justice of the peace in East St. Louis, Illinois, to collect the debt above described, the suit being returnable on the 27th day of June, 1891.

On the same day a notice of garnishment in aid of said attachment was properly served on the agent of defendant in East St. Louis, Illinois.

It is an admitted fact in this case, that prior to the trial of said suit plaintiff was orally notified of the pendency thereof in time for him to have defended the same, and requested by defendant to defend the same, as was also his attorney, Virgil Rule, Esq.

On the 27th day of June, 1891, an attachment notice, in conformity to the laws of Illinois, was issued by the justice of the peace in East St. Louis, and was published, as the officer's return shows, by posting one notice at the post-office, one at Egler's saloon, and one at the justice's office, on the 29th day of June, 1891. On the 13th day of July, 1891, the case came on for trial, neither the plaintiff, nor defendant, nor the garnishee, appearing. The attachment was sustained,

and a judgment rendered against plaintiff for the sum of one hundred and thirty-two dollars ($132), with a conditional judgment against the garnishee, the defendant here, and the issue of *scire facias*, as required by the Illinois statutes.

On the 23d day of July, 1891, the garnishee, this defendant, filed its answer, stating that it then owed the plaintiff the sum of $71.83, and pleading the exemptions allowed the plaintiff by the laws of Illinois and also of Missouri.

On the 25th day of July, 1891, there was a judgment by default before the justice in favor of *Peter Tourville, the plaintiff in error*, for the use of Alexander Flannigan, against the Wabash Railroad Company, garnishee, in the sum of $21.83, or the balance due to said Tourville from said railroad company after crediting Tourville with the sum of $50, the exemption then allowed to heads of families, resident and non-resident, under the laws of Illinois. From this judgment the garnishee, the defendant here, perfected an appeal to the City Court of East St. Louis, Illinois, where, on the 21st day of December, 1891, after a trial by jury, the same judgment was rendered against it. At the same time the defendant, the garnishee, had a case pending in the Supreme Court of Illinois involving the same issues raised by it in this case. Wabash Railroad Company vs. Dougan, 142 Ill. 248.

Those issues were decided against it, so that there was nothing left for it to do thereafter but to pay the judgment. An execution was issued against the defendant by the clerk of the City Court of East St. Louis for the amount of said judgment and costs, the sum of $43.38, which defendant paid to said officer on the 6th day of January, 1892.

On the 10th day of June, 1891, plaintiff instituted this suit against defendant before a justice of the peace in the city of St. Louis, Missouri, claiming the sum of $81 as due him for wages earned in the defendant's service. There was a judgment by default before the justice against the defendant for the sum of $75, from which the defendant duly appealed to the Circuit Court of the City of St. Louis, Missouri.

A short time after this suit had been instituted, and before any judgment had been rendered in either cause either in Missouri or in Illinois, the defendant tendered to Tourville and his attorney the balance due Tourville as wages after the allowance of his exemptions in the garnishment case in Illinois, or the sum of $21.83, provided the defendant was released as such garnishee in that State.

This tender and offer to pay was refused by Tourville and his attorney, each insisting upon the payment to Tourville by defendant of the full amount of Tourville's wages, notwithstanding the pendency of the garnishment proceedings in East St. Louis.

On the 10th day of June, 1891, Tourville left the defendant's service, and on that day defendant owed him wages as follows:

From May 1 to May 31, 1891, -	$71 83
From June 1 to June 10, 1891, -	10 15
Total, - - - - -	$81 98

On the 23d day of January, 1892, this cause came on for hearing before Hon. James E. Withrow in the Circuit Court of the City of St. Louis, Missouri, upon a stipulation containing the facts hereinbefore recited.

On the 6th day of April, 1892, the court rendered judgment in favor of the plaintiff as follows:

Whole amount of wages, - -	$81 98
Less judgment and costs paid by defendant in East St. Louis, Ill.,	43 38
Judgment against defendant,	$38 60

From this judgment the plaintiff prosecuted a writ of error to the St. Louis Court of Appeals on the ground that the judgment was for the wrong party, while at the same time the defendant perfected an appeal from the taxation of costs against it in the proceeding, claiming that such costs should have been assessed against the fund in its hands as garnishee, as it was the prevailing party in the litigation.

On the 26th day of March, 1895, the judgment of the court below was reversed in the St. Louis Court of Appeals on the ground that the service of notice in the attachment proceeding was defective, and was not in compliance with the statutes of Illinois then in force.

The cause was therefore remanded on said day with directions to the trial court to enter a judgment in favor of plaintiff for $81.

On the 1st day of April, 1895, Alexander Flannigan commenced another attachment proceeding against Peter Tourville before a justice of the peace in St. Clair county to recover the balance due on the debt hereinbefore described. Service was had on the Wabash Railroad Company, as garnishee in Illinois, on the 1st day of April, 1895. This cause was returnable in East St. Louis, Illinois, on the 27th day of April, 1895.

While this second suit in Illinois was still pending

in Illinois, and undetermined, Hon. James E. Withrow, circuit judge in the city of St. Louis, Missouri, on the 3d day of May, 1895, proceeded to enter judgment against the defendant in this cause. On that day the mandate of the St. Louis Court of Appeals was received by said judge.

On that day the defendant offered in evidence a correct transcript of the proceedings in the second attachment suit in Illinois, above described, as well as the garnishment in aid thereof, as far as such suits had then progressed, showing that such actions were then pending in Illinois, and had intervened between the reversal of the judgment in this case and the further proceedings therein before Judge Withrow, on the 3d day of May, 1895.

This evidence was excluded by the court, and defendant duly excepted.

It was admitted that defendant never owed plaintiff any other debt than the $81 in controversy, and that the second attachment proceedings were instituted by the same parties in Illinois who brought the first suit in that State to recover the same debt.

On the 3d day of May, 1895, Judge Withrow entered a judgment against the defendant for the sum of $81. On the same day defendant filed its motion for a new trial, assigning, among other reasons, that the judgment was in violation of section 1 of article 4 of the constitution of the United States.

This motion was overruled by the court on the 10th day of June, 1895, and defendant duly saved its exceptions.

On the 25th day of June, 1895, the defendant filed a motion to modify the judgment in this cause. At-

tached to that motion, and made a part of it, was a transcript, showing a full, complete and perfect compliance with the laws of Illinois in every particular, wherein it appeared that in the second attachment proceedings instituted in Illinois, as above described, Flannigan obtained judgment against Tourville in Illinois on May 15, 1895, for the sum of $139.40, the balance due on the note aforesaid, with accrued interest, and that on the 14th day of June, 1895, a judgment was rendered against the Wabash Railroad Company, as garnishee, in said State, for the sum of $81.98.

On the 11th day of October, 1895, an execution was issued against the defendant on the judgment against it entered by Judge Withrow, in the city of St. Louis, on the 3d day of May, 1895, as aforesaid.

On the 12th day of October, 1895, defendant filed its motion to quash said execution, assigning the same reasons therefor as in its former motions.

On the 4th day of December, 1895, Judge Withrow overruled said motions, and defendant duly excepted.

Thereafter, in due time, the defendant perfected its appeal to the Supreme Court of Missouri.

By consent of counsel it is admitted that the laws of Illinois relating to this subject may be used in this case, with the same effect as if formally offered in evidence.

The cause was submitted to the Supreme Court of Missouri, and argued there at the April term, 1896.

On the 21st day of February, 1899, the judgment was affirmed in the Supreme Court of Missouri, whereupon the plaintiff in error sued out a writ of error in this cause to this court.

The issue now presented in this cause is, as the

court will see, whether or not the judgment against the defendant as garnishee in the second attachment proceeding in Illinois is entitled to and should receive full faith and credit in the courts of Missouri.

If full faith and credit is to be given to such judgment, then its payment in Illinois, by defendant, will be a perfect defense to this action.

That payment must be made by defendant whenever an execution is issued is apparent. If it is, then defendant will inevitably be compelled to pay the judgment in Illinois, and also the judgment in Missouri, upon the same cause of action, and thus pay a part of Tourville's debts, and his wages, too.

Our contention is that a rule which works out such a result is inequitable as well as illegal and unjust.

POINTS AND AUTHORITIES.

I.

The first proceedings in East St. Louis, here under review, disclose a substantial compliance with the statutes of Illinois, and is all that is necessary in such cases.

Secs. 42 to 58 inclusive, C. 11, R. Stat. Ills. 1891, pp. 133, 134, 135, 136;

Secs. 1 to 28 inclusive, C. 62, R. Stat. Ills. 1891, pp. 752 to 758 inclusive.

II.

Even if such proceedings were irregular, the judgment was in the plaintiff's favor, and he is, therefore, estopped from here questioning them.

Herman on Estoppel, Sec. 53, p. 46, and cases cited;

Freeman on Judgments, Sec. 249, and cases cited;

Strong vs. Ins. Co., 62 Mo. 289;

Henry vs. Woods, 77 Mo. 280;

Shelbina Hotel Association vs. Parker, 58 Mo. 327;

Caldwell vs. White, 77 Mo. 471.

III.

The payment by defendant of the first judgment, here under consideration, is a perfect defense to this action.

Stevens vs. Dillman, 86 Ill. 233;

Drake on Attachment, Sec. 699;

Osborne vs. Schutt, 67 Mo. 712;

Homes vs. Corbin, 20 Mo. App. 497;

Minor vs. Roger Coal Co., 25 Mo. App. 78;

Marchildon vs. O'Hara, St. Louis Ct. App., 52 Mo. App. 523.

IV.

The legal effect of the appeal to the Circuit Court in Missouri was to vacate and annul the judgment of the justice of the peace rendered in that State.

Earl vs. Hart, 89 Mo. 268.

And the effect of the reversal of the first judgment, rendered by Judge Withrow, was to vacate it also, and to restore the parties thereto to the same condition in which they were prior to its rendition.

Crispen vs. Hannovan, 86 Mo. 160.

V.

In the interval between the reversal of the first judgment in Missouri and the last one here appealed from, rendered by Judge Withrow, or from March 26, 1895, to May 3, 1895, the fund in defendant's hands was duly attached in Illinois on the first day of April, 1895, and, therefore, that proceeding in Illinois took precedence over the subsequent proceedings in Missouri.

And the second judgment in Illinois against defendant, as garnishee, destroyed plaintiff's right to recover the same sum from defendant in this proceeding, as that judgment was entitled to full faith and credit in the courts of Missouri.

Freeman on Judgments, Sec. 559, and cases cited;
State to use vs. Williamson, 57 Mo. 192;
Turner vs. Johnson, 95 Mo. 431;
Wyeth H. & W. Co. vs. Lang and Co., 127 Mo. 242;
12 Am. and Eng. Enc. Law, p. 148;
Ins. Co. vs. Thompson, 155 Ill. 304;

J. S. Menken Co. vs. Brinkley, 94 Tenn. 721; S. C. 31; S. W. Rep. 92;
Bank vs. Ins. Company, 83 Iowa, 491;
Harvey vs. Great Northern Ry. Co., 50 Minn. 405;
Mills vs. Duryee, 7 Cranch (U. S.), 480;
Wallace vs. McConnell, 13 Peters (U. S.), 136;
McElmoyle vs. Cohen, 13 Peters (U. S.), 312;
Hanley vs. Donoghue, 116 U. S. 4;
Bank vs. Rollins, 99 Mass. 313;
R. R. vs. May, 25 Ohio St. 347;
2 Kent (9th edition), 122, and cases cited;
Drake on Attachment (7th edition), Sec. 700, and cases cited;
Rev. Stat. Mo. 1889, Vol. 1, Sec. 4881, p. 1099;
Starr and Curtis' Annotated Statutes, Illinois, C. 51, Sec. 13, Vol. 1, p. 1081.
C. R. I. & Pac. Ry. vs. Sturm - 174 U. S. 710.

VI.

A judgment is subject to garnishment.

Waples on Garnishment, Sec. 362, and cases cited.

VII.

A void judgment does not bar a subsequent action to recover the same debt.

Freeman on Judgments (3d edition), Sec. 117, and cases cited;
Hope vs. Blair, 105 Mo. 85.

VIII.

And the first judgment, even if it was valid, not having satisfied the debt, cannot be pleaded in bar by defendant to the second attachment proceeding in Illinois.

Waples on Garnishment, Sec. 955, and cases cited;

Drake on Attachment (7th edition), Secs. 707 and 708, and cases cited;

Barton vs. Albright, 26 Ind. 489.

IX.

Rights of the parties which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the original proceedings in which it was rendered, would not be adjudicated therein.

Chouteau vs. Allen, 74 Mo. 59;

Froyer vs. Wood, 96 Mo. 478;

Freeman on Judgments, Sec. 154, and cases cited;

Young vs. Thrasher, 123 Mo. 312;

Howland vs. Ry., 134 Mo. 474.

Hawkins v. Glass, 108 U.S. 422.

ARGUMENT.

I.

The attachment and garnishment laws of Illinois in evidence provide, as the court will see upon an examination of them, for the institution of just such proceedings as these against non-resident debtors, and the garnishment of their wages in the hands of resident employers. The necessary requisites for such proceedings, such as the notice, the affidavit, the bond, as well as the issue and service of process, are all found in this record.

On account of the non-residence of the judgment debtor, the plaintiff here, the first case, although begun on the 3rd day of June, 1891, was not tried until the 25th of July, 1891, nor finally determined until December 21, 1891, during all of which time the plaintiff, had he chosen to do so, might have appeared and defended the action. That he was personally notified of the pendency of the suit in ample time to have taken all the steps necessary to fully protect his interests, is an admitted fact here. His only excuse for not doing so is so flimsy as to disclose, to any unprejudiced mind, that it is a mere pretense and a sham. For instance, he complains that no notice was mailed to him, as the statutes required should be done when his residence was known, yet he ignores the service of the higher and better form of notice, the direct personal one, which he admits having received. Again, he also complains of the local notice posted up in East St. Louis as not being in the exact technical language of the statute, when it is admitted that a direct personal notice was given to him of the pendency of the suit in

ample time to have permitted him to appear and defend it, had he chosen to do so.

Such a course was, however, the very one which he never had any intention of adopting. The debt was just and long past due, and he knew it.

He had no defense to the action, and never intended to interpose any. But, in lieu of that, acting, doubtlessly, under the advice of able counsel, he remained away after due notice, and threw upon the defendant the burden of a defense which the law imposed upon him, and is now seeking to invoke the technical shadow, and not the real substance, of a directory not a mandatory statute, hoping thus to compel defendant to pay a portion of his debts, and his wages, too.

II.

But even if the statutory provisions were disregarded in part in the first proceeding, how is the plaintiff injured by it?

The judgment of which he complains was, as the record shows, in his own favor.

In such a case, whatever irregularities, if any, existed, were in his interest and not against him, and he is, therefore, estopped from calling them in question.

The rule of law upon this subject is thus stated by the leading text-writers, and has long been settled in the appellate courts of Missouri.

"The purpose of giving notice is not in order to give a ground of action; but if a demand be made which the party indemnifying is bound to pay, and notice be given to him, and he refuses to defend the action, in consequence of which the person indemnified is obliged to pay the demand, that is equivalent to a

judgment, and estops the other party from saying that the defendant in the first action was not bound to pay the money."

Herman on Estoppel, Sec. 53, p. 46, and cases cited.

"After judgment on the merits the parties cannot canvass the same question again in another action, although, perhaps, some objection or argument might have been urged upon the first trial which would have led to a different judgment."

Freeman on Judgments, Sec. 249.

"Where a party to an action, being fully apprised as to his rights, suffers judgment to go against him when he might, by the exercise of reasonable diligence in making his defense, prevent a recovery of the amount claimed, either in whole or in part, he cannot, in a subsequent proceeding at law or in equity, be allowed to reagitate questions which were, or should have been, adjudicated at the former trial."

Shelbina Hotel Ass'n *vs.* Parker, 58 Mo. 327;
Caldwell vs. White, 77 Mo. 471.

"Where one is bound to protect another from liability, he is bound by the result of a litigation to which such other is a party; provided he had notice of the litigation and opportunity to control and manage it."

Strong vs. Ins. Co., 62 Mo. 289;
Henry vs. Woods, 77 Mo. 280.

Applying the rule above cited to this case, it certainly defeats the plaintiff's cause of action, because,

having remained silent when he should have spoken, he cannot now be heard. As was well said in Marchildon vs. O'Hara, *supra*, by Judge Rombauer, the claim of exemptions in a garnishment proceeding is a personal privilege, which the garnishee cannot assert for the debtor. The latter must, under this rule, make that plea himself.

In this case, as the record shows, the plaintiff never interposed any plea of exemptions whatever. Although not required to do so, the defendant did claim these exemptions for the plaintiff, and succeeded in having those guaranteed by the laws of Illinois allowed, thus effecting a saving for him of the sum of fifty dollars.

Not content with that, the plaintiff then turns upon the stakeholder, who never had, and can have, no interest in the matter, and demands that it shall be compelled to pay a judgment in a case which, after due notice of its pendency, he who alone had the right to do so refused to defend, and where, if he had interposed a proper plea, the result might have been otherwise from that now complained of.

To permit a recovery on plaintiff's part in such a case would be as inequitable as it is unjust.

III.

This is not a case where, for the purpose of defrauding plaintiff out of the exemptions given to him by the law of his domicile, and of compelling him to pay an unjust and stale claim, the creditor, himself a resident of the same State with the debtor, has unjustly or fraudulently sent such claim to a foreign jurisdiction, there to be proceeded upon as against a non-resident.

Here the creditor and garnishee are both citizens of

the State of Illinois, the place where the action complained of was commenced.

That the garnishee is a citizen of Illinois as well as of Missouri, has long been settled. In R. R. vs. R. R., 136 U. S., p. 375, Judge Field, speaking for this court, used the following language:

"There are many decisions, both of the Federal and State courts, which established the rule that however closely two corporations of different States may unite their interests, and though even the stockholders of the one may become the stockholders of the other, and their business be conducted by the same directors, *the separate identity of each, as a corporation of the State by which it was created, and as a citizen of that State, is not thereby lost.*"

The defendant, therefore, being a citizen of Illinois, and having an agent there, was personally served with process in this action, and was obliged to respond thereto. That such an action could be maintained against the defendant in the courts of Illinois, even if the attaching creditor had been a citizen of Missouri, was settled in the Dougan case (142 Ill. 242) in Illinois, and in Missouri by the case of Wyeth Co .vs. Lang & Co., 127 Mo. 242.

As before stated, although not obliged to do so, yet the defendant did contend for the Missouri as well as for the Illinois exemptions due to the plaintiff, securing the latter for him, though not the former, and only giving up the fight in his behalf, not its own, when forced to do so by the ruling of the Supreme Court of Illinois upon a like question.

In the meantime what was the plaintiff doing to protect his interest? Did he ever join the defendant in

its persistent, though in part unavailing, defense? Did he ever attempt to prove payment, or want of consideration, as a defense to his note sued on? Not at all. He calmly waited in perfect unconcern, from the 3d of June, 1891, to the 31st day of December, 1891, until the judgment against defendant, *in his favor*, became final, and until January 6, 1892, when defendant was forced to pay it, and now he is here demanding that defendant shall pay his debt, as evidenced by a judgment in his own favor against it, and his wages also, without deducting that judgment and costs from the sum due.

This the learned and upright circuit judge, who heard the cause below, held that he was not entitled to, and in this conclusion, we trust, this court will concur.

IV.

Passing now to the consideration of the suit in Missouri, while the record in that proceeding shows that plaintiff obtained a judgment against the defendant, before a justice of the peace, on the 22d day of June, 1891, yet it also appears that defendant thereafter perfected an appeal from such judgment to the Circuit Court of the City of St. Louis, Missouri. (Abstract, p. 3.)

The rule stated by Judge Black, in Earl vs. Hart, 89 Mo. 268, then applied:

"The conclusion is irresistible from these statutes, and adjudications thereon, that the effect of the appeal is to vacate and set aside the judgment of the justice, save where the appeal, not the suit, is dismissed."

So that, until April 6, 1892 (Abstract, pp. 5 and 6),

there was no judgment in this cause against the defendant in the State of Missouri.

The judgment rendered by Judge Withrow against the defendant, on the 6th of April, 1892, was reversed in the St. Louis Court of Appeals on the 26th day of March, 1895. (Abstract, p. 6.)

The effect of that was, as said by Judge Norton, in Crispen vs. Hannovan, 86 Mo. 168, "to restore the parties to the same condition in which they were prior to the rendition of the judgment. The judgment reversed becomes mere waste paper, and the parties to it are allowed to proceed in the court below to obtain a final determination of their rights in the same manner and to the same extent as if the cause had never been heard or decided by any court.

Neither, in the subsequent prosecution of the cause, can suffer detriment nor receive assistance from the former adjudication.

So that on the 1st day of April, 1895, the second attachment proceeding in Illinois was a prior lien on the fund then in the hands of defendant, and at that time free from the lien of any judgment in the State of Missouri, and, therefore, paramount to any judgment subsequently entered in Missouri.

V.

Section 1 of Article 4 of the Constitution of the United States is as follows:

"Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof."

In Mills vs. Duryee, 7 Cranch, 483, decided in 1813, Justice Story said:

"This act declares that the record, duly authenticated, shall have such faith and credit as it has in the State court from whence it is taken. If in such court it has the faith and credit of evidence of the highest nature—viz., *record evidence*—it must have the same faith and credit in every other court."

In Wallace vs. McConnell, 13 Peters, 15, decided in 1839, Justice Thompson said:

"If the attachment had been conducted to a conclusion, and the money recovered of the defendant before the commencement of the present suit, there can be no doubt that it might have been set up as a payment upon the note in question. And if the defendant would have been protected *pro tanto* under a recovery had by virtue of the attachment, and could have pleaded such recovery in bar, *the same principle would support a plea in abatement of an attachment suit pending prior to the commencement of the present suit. The attachment of the debt, in such case, in the hands of the defendant, would fix it there in favor of the attaching creditor, and the defendant could not afterwards pay it over to the plaintiff. The attaching creditor would, in such case, acquire a lien upon the debt, binding upon the defendant, and which the courts of all other governments, if they recognize such proceedings at all, could not fail to regard.*"

In McElmoyle vs. Cohen, 13 Peters, 324, decided in 1839, Justice Wayne said: "It must be obvious when the constitution declared that full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State, and pro-

vides that Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved, and the effect thereof, that the latter clause, as it relates to judgments, was intended to provide the means of giving to them the conclusiveness of judgments upon the merits, when it is sought to carry them into judgments by suits in the tribunals of another State."

In Hanley vs. Donoghue, 116 U. S. 3, Justice Gray said:

"By the settled construction of these provisions of the constitution and statutes of the United States a judgment of a State court, in a cause within its jurisdiction, and against a defendant lawfully summoned, or against lawfully attached property of an absent defendant, is entitled to as much force and effect against the person summoned or the property attached, when the question is presented for decision in a court of another State, as it has in the State in which it is rendered."

The same rule is laid down in the text-books.

Chancellor Kent thus states it:

"A *lis pendens*, before the tribunals of another jurisdiction, has, in cases of proceedings *in rem*, been held to be a good plea in abatement of a suit. Thus, where a creditor of a bankrupt had *bona fide*, and by regular process, attached in another State a debt to A., and in the hands of B., it has been held that the assignee of the bankrupt could not, by a subsequent suit, recover the debt of B."

2nd Kent, 9th Edition, p. 123.

It is said by Mr. Freeman:

"The Supreme Court of the United States, in a decision which, since its promulgation, has been adopted throughout the Union, declared that the act gave to the record of every judgment, when duly authenticated, and offered in evidence in another State, the same faith and credit to which it was entitled in the State whence it was taken. That if, in such State, it had the faith and credit of evidence of the highest nature—viz., record evidence—then it must have the same faith and credit in every other State."

Freeman on Judgments, 3d Edition, Sec. 559, p. 587.

Judge Drake said:

"In England the doctrine has long been, that where one has been summoned as garnishee, and the defendant in the attachment, before judgment of condemnation of the debt, sues the garnishee for that debt, the latter may plead the attachment in abatement, but not in bar, until judgment be recovered against him. It is no case for an interpleader. * * * The same views have been expressed by the Superior Court of New Hampshire, by the Supreme Courts of Maine, Pennsylvania, South Carolina, Michigan and Iowa, by the Court of Appeals of Maryland, by the Circuit Court of the United States for the Third Circuit, and by the Supreme Court of the United States."

Drake on Attachment, 7th Edition, Sec. 700, pp. 628 and 629.

The statutes of Illinois relating to proof of records is as follows:

"The papers, entries and records of courts may be proved by a copy thereof, certified under the hand of the clerk of the court having the custody thereof, and the seal of the court, or by the judge of the court if there be no clerk."

Ch. 51, Sec. 13, Rev. Stat. Ills., Vol. I., p. 1081.

And section 17 contains a like provision as to proceedings before a justice of the peace.

Section 4881 of the Revised Statutes of Missouri is as follows:

"The records and judicial proceedings of any court of the United States, or of any State, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, and certified by the judge, chief justice, or presiding magistrate of the court, to be attested in due form, shall have such faith and credit given to them in this State as they would have at the place whence the said records come. Copies from the record of proceedings in any court of record of this State, attested by the clerk thereof, with the seal of the court annexed, if there be a seal, or if there be no seal, with the private seal of the clerk, shall be received as evidence of the acts or proceedings of such court of record in any court of this State."

This principle has long been recognized in the appellate courts of Missouri.

In State to use vs. Williamson, 57 Mo. 192, a transcript of a judgment rendered in Virginia was held to be admissible in evidence in Missouri.

In Turner vs. Johnson, 95 Mo. 431, a judgment rendered in Kentucky was admitted in evidence in

Missouri, and was enforced there in accordance with the laws of Kentucky.

In Wyeth Hardware Company vs. Lang & Co., 127 Mo. 242, it was held that debts due a resident of this State by a resident of the State of Kansas may be garnisheed in the latter State, although service on the principal defendant is made by order of publication merely.

From the great number of cases in the United States in which this question has arisen, the following has been selected as persuasive authority:

In Ins. Co. vs. Thompson, 155 Ill. 204, it was held that a judgment of another State against a domestic corporation, upon service made upon one declared by the statute of such State to be an agent of such corporation, will be inforced in Illinois where such corporation has voluntarily transacted business in such other State in such manner as to bring itself within its jurisdiction.

In Menken and Company vs. Brinkley, 94 Tenn. 721–731; S. W. Rep. 92, it was held that a judgment before a justice of the peace of another State falls within the provisions of Sec. 1, Art. 4, of the Constitution of the United States, requiring each State to give full faith and credit to the judicial proceedings of every other State.

The case of Bank vs. Fire Ins. Company, 83 Iowa, 491, was an action on a policy of insurance. The property insured by the policy was destroyed by fire during the life of the contract, and the defendant, therefore, became liable thereon for the full amount insured. On the next day the assured assigned to the plaintiff its claim against defendant for the loss,

and the latter was notified of the loss and the assignment. At the time the plaintiff and the assured were Iowa corporations, and the defendant was a Pennsylvania corporation, having a general agency at Philadelphia, and doing business both in Iowa and in Illinois under a license.

On the 10th of April, 1889, the firm of Glover & Wilcomb, doing business in Chicago, commenced an action in the courts of that State against the assured. The action was aided by attachment, and the defendant was served with a notice of garnishment as a debtor of the assured, and made answer under oath, as required by the laws of Illinois. In its answer it stated the facts in regard to the insurance, the loss, and the assignment to plaintiff. The plaintiff was then required by the Illinois court to interplead, and appeared and filed its plea, and interpleader setting forth its right to ownership of an interest in the subject matter by virtue of the assignment. The plaintiff in the action denied the allegations contained in the garnishee's answer, and the issues thus formed stood for trial in the courts of Illinois when this action was commenced. The Illinois court had competent original jurisdiction, and the proceedings therein had were authorized by the statute of the State of Illinois. A demurrer was sustained to the defendant's answer, and the defendant refusing to plead further, a judgment was rendered in favor of the plaintiff for the amount of its claim. In the Supreme Court of Iowa the judgment below was reversed, on the following ground:

Held, upon demurrer to an answer by A., everything in the nature of a plea in abatement, that the laws of Illinois being presumed to be the same as those of this

State, in the absence of a showing to the contrary, A. was liable to a suit upon the claim of D. in the courts of Illinois in all respects as a resident corporation of that State would be, and likewise to garnishment therefor, and, therefore, the Illinois court, by its process of garnishment, and the appearance of G. therein, had acquired jurisdiction of the claim in controversy. For that reason the cause was remanded for trial to the court below.

In Harvey vs. Great Northern Ry., 50 Minn. 405, the defendant was, on November 23, 1891, indebted to one Zeller, a freight train conductor on its railroad in Montana, $95.25 for services.

Zeller was at the same time indebted to Truscott, of Montana, in the sum of $79.50.

On that da Truscott commenced an action against Zeller before a justice of the peace in Montana to recover this debt, and attached Zeller's claim against the Great Northern Railway Company.

On December 4, 1891, Zeller assigned his claim to plaintiff Harvey, who brought this action against the railway company to recover the money.

The defendant answered, setting up the Montana attachment suit above described as a bar. The plaintiff had judgment, and the defendant appealed. The judgment was reversed and the cause remanded, with directions to the court below to set aside the judgment and continue the cause until the final determination of the attachment proceedings in Montana.

The Supreme Court of Minnesota there held that the pendency of a prior action by attachment in Montana, which binds the debt, might be set up by way of defense to a suit by the defendant in the attachment in Minnesota to recover the same debt.

This is the identical question now before this court in this cause.

Here the Illinois attachment suit, instituted April 1, 1895, is necessarily prior in time as well as in right to the subsequent judgment entered by Judge Withrow on the 3d day of May, 1895, in this action, and therefore the entry of the last named judgment should have either been postponed by Judge Withrow until after the attachment suit in Illinois was finally determined or modified after the rendition of judgment against defendant, as garnishee, in that State, so as to prevent the collection of the judgment in Illinois and the judgment in Missouri, too, thus requiring the defendant to pay plaintiff's debt twice.

For, as the court will see from the record, this cause originated before a justice of the peace, where formal pleadings are not required.

The evidence offered by defendant in Missouri on the 3d day of May, 1895, as to the pending suit in Illinois, attaching the same debt here in controversy, was in the nature of a plea in abatement.

The subsequent motions to modify this judgment and recall the execution were virtually pleas in bar.

True, Judge Withrow was obliged to obey the mandate of the Court of Appeals, and it was unquestionably his duty to do so.

But, between the time when the first judgment in this case was reversed, or on March 26, 1895, and May 3d, 1895, a new state of affairs presented itself to him.

On the 1st day of April, 1895, a perfectly valid attachment suit was instituted in Illinois in which the defendant was made a garnishee, and due service was had upon it as such in that State.

By this means the debt due to the plaintiff from the defendant, which had been fixed at the sum of $81 by the decision of the Court of Appeals, was sequestered, so that instead of paying it to the plaintiff in Missouri, upon the judgment to be rendered here, it was thereby impounded for the plaintiff's benefit in the courts of Illinois.

This worked neither injustice or hardship, so far as the plaintiff was concerned, for his debt to Flannigan, in Illinois, was long overdue, and never questioned, and it far exceeded the sum due from defendant to him.

So, whether the Illinois attachment was prior in time, or not, it certainly was in right, and, therefore, full faith and credit should have been given to it by Judge Withrow here.

But, by ignoring that proceeding, as Judge Withrow did, the mandatory provisions of the constitution of the United States, the statutes of Missouri, as well as the settled rules of law in that State, were all openly violated, and thus the defendant is confronted with two judgments against it, one in Illinois, and the other in Missouri, for the same debt.

This should not be, and would not have been, if the learned judge below had obeyed the requirement of the laws above cited. The amount involved in this controversy is not large, but the principle is important, and, therefore, we ask for a reversal of the judgment below, with directions to Judge Withrow to sustain the defendant's motion, in order that it may, when the Illinois judgment against it is paid, as it soon must be, obtain full faith and credit therefor in the courts of Missouri, and that this judgment may be satisfied and

discharged by the appropriation of the sum due plaintiff here to the payment in part of his long-standing, just, and unquestioned debt in Illinois.

VI.

The learned counsel for plaintiff will, no doubt, contend here, as he did below, that the judgment in Missouri is not subject to garnishment in Illinois.

The opposite rule is thus stated by Mr. Waples:

"When judgment has been rendered, there is no impediment to its being reached by garnishment in a suit against the judgment plaintiff.

"Even alimony adjudged to the wife against her divorced husband may be thus reached in a suit against her."

Waples on Garnishment, Sec. 362, p. 262, and cases cited.

Besides, under the laws of Illinois, the money due to plaintiff from defendant, thus reduced to judgment in Missouri, became thereafter a part of the personal estate of the plaintiff in the defendant's hands, which the defendant was bound to disclose in its answer, and it was thereafter subject to garnishment in that State, notwithstanding the fact that the plaintiff was a non-resident of Illinois, and that the wages were earned in Missouri.

Ch. 62, Sec. 5, Rev. Stat. Ill., Vol. I., p. 1221; Wabash Railroad vs. Dougan, 142 Ill. 248.

The garnishment law of Missouri is substantially the same.

Sec. 5221, Rev. Stat. Mo., 1889, Vol. II., p. 1265.

And the Supreme Court of Missouri has virtually adopted the Illinois rule.

Wyeth Hardware Company vs. Lang & Co., 127 Mo. 242.

Therefore the judgment in plaintiff's favor, against the defendant, in Missouri, was not only subject to garnishment in Illinois, but also properly appropriated to the payment of plaintiff's debt to Flannigan there, by that proceeding.

VII.

It was contended below, and doubtless will be here, by the learned counsel for the plaintiff, that the second attachment proceeding could not lawfully be prosecuted by Flannigan in Illinois, because he had already recovered a judgment there in a prior action for the same debt.

But, one answer to that contention is that the first judgment in Illinois was reviewed by the St Louis Court of Appeals, and there held to be void.

A void judgment is not a bar, and, therefore, cannot be used as such to defeat a subsequent action.

This rule is thus laid down by Mr. Freeman:

"A void judgment is, in legal effect, no judgment. By it no rights are divested. From it no rights can be obtained. Being worthless in itself, all proceedings founded upon it are equally worthless. *It neither binds nor bars any one.* All acts performed under it, and all claims flowing out of it, are void."

Freeman on Judgments, 3d Edition, Sec. 117, and cases cited.

The Supreme Court of Missouri adopted the above view in Hope vs. Blair, 105 Mo. 85.

The first judgment in Illinois, if void, was, therefore, no protection to the defendant, and could not be invoked by it, or by the plaintiff, as a bar to the second suit, by the same creditor, in that State.

VIII.

Our contention here, however, is, as it was in the court below, as well as in the Court of Appeals, that the first judgment obtained against defendant, in Illinois, by the plaintiff, to the use of Flannigan, was valid.

Treating such judgment, therefore, as valid, we contend that, as it did not satisfy the debt, it could not have been pleaded either in abatement or in bar, by defendant, to the second attachment proceeding in Illinois.

The rule for which we here contend is thus laid down by Mr. Waples:

"It is no payment, that can pleaded in bar of a subsequent suit, when the garnishee has merely credited the garnisheer upon his books, and debited the attachment creditor the same amount, after he has been charged in a garnishment proceeding."

Waples on Garnishment, Sec. 955, p. 647.

It is thus stated by Mr. Drake:

"Nor does this judgment against the garnishee amount to *res adjudicata* as between him and the defendant, so as to preclude the latter from claiming more in his action than the garnishee was considered in the attachment proceedings to owe."

Drake on Attachment, Sec. 707 (7th Edition), and cases cited.

It is thus declared by the Supreme Court of Indiana:

"The judgment against the garnishee in an attachment proceeding is not conclusive as to the amount owing by the garnishee to the attachment defendant. In a suit by the latter for the debt, the judgment on the garnishee process is not a bar, but is a good credit to the amount paid."

Barton vs. Albright, 29 Ind. 489.

And so it is in this action. Stating the account between Flannigan and Tourville, after the collection from defendant of both judgments in the two attachment and garnishment proceedings in Illinois, how would it stand?

Tourville owed Flannigan, on the 3rd day of June, 1891 (Abstract, page 2)	$132.00
Tourville collected from defendant, as garnishee for Flannigan, in the first proceeding	21.83
Balance still due Flannigan from Tourville after payment of first judgment,	$110.17
Flannigan has a valid judgment against defendant, as garnishee, in the second proceeding, of	81.98
Balance still due to Flannigan from Tourville after both judgments have been paid by defendant	$28.19

Referring now to the state of the account between Tourville and defendant, how would it stand after the payment by defendant of all the judgments against it, in both States, Illinois and Missouri, on Tourville's account?

THUS:

Whole amount due Tourville from defendant as wages (Abstract, page 51).....	$ 81.98
First judgment in Illinois, exclusive of costs (Abstract, page 51).....	21.83
Second judgment in Illinois, exclusive of costs (Abstract, page 28).....	81.98
Judgment in Missouri, exclusive of costs: (Abstract, page 31).....	81.00
	$184.81
	81.98
Excess of judgments over wages due to Tourville by defendant.....	$102.83

The unfortunate defendant, a mere stakeholder, therefore, will, if the judgment below is permitted to stand, not only be compelled to pay to Tourville the sum originally due him as wages, but also contribute for the benefit of that individual the sum of $102.83, on account of Tourville's debt to Flannigan, which Tourville has never either contested or ventured to dispute.

A rule of either law or equity which works out such a result as the above is abhorrent alike to reason and to justice.

IX.

The Supreme Court of Missouri, however, held in this case that Circuit Judge Withrow's action in excluding all evidence of the pending suit in Illinois was proper, because the first judgment had been reversed and remanded with directions to enter up a new judgment for a specific sum, and also because all prior pro-

ceedings were necessarily merged in the new judgment.

But in reaching that conclusion that learned court overlooked the fact that Flannigan, the creditor, was never a party to this suit, and was, instead, a stranger to this record, and therefore his rights could not be affected in any manner by such new judgment. Mr. Freeman thus states the correct rule on this subject:

"It is a general rule that an adjudication *takes effect only between the parties to the judgment, and that it gives no rights to or against third parties.*"

Freeman on Judgments (3d Edition), Sec. 154, and cases cited.

In Chouteau vs. Allen, 74 Mo. 59, after the reversal of the judgment in the Supreme Court of Missouri with specific directions, the holder of one of the bonds in controversy, who was not a party to the record, was permitted by the court below at the new trial to come in and assert his title to said bonds and to share in the proceeds of the general fund.

No objection was made to this in the lower court, but it was assigned as one of the errors on the second appeal. But the Supreme Court said: "No objection was made by either party to his coming in, *and we discover none, as he was a stranger to the record, and therefore not concluded by our appellate action.*"

In Young vs. Thrasher, 123 Mo. 312, the Supreme Court of Missouri, speaking through Judge Macfarlane, again said: "*Rights of the parties which may have accrued subsequent to the rendition of the original judgment, and which were not in issue in the proceedings in which it was rendered, would not be adjudicated therein.*"

In Howland vs. Ry., 134 Mo. 476, the plaintiff sued the defendant railway on the 31st day of duly, 1894, for $31.20 for work and labor on the road, or for his unpaid wages earned in June and July, 1894. The plaintiff was the head of a family and a resident of Missouri, and the wages sued for were earned in Missouri.

The defendant was a corporation, organized as such in Illinois and Iowa, operating a line of railway in Illinois, Iowa and Missouri, having agents upon whom process could be served in each of said States. A creditor of the plaintiff living in Missouri brought suit against him by attachment, in Iowa, and garnished the defendant in that State. The defendant filed an answer in the Iowa garnishment case, admitting its indebtedness to the plaintiff in the sum of $31.20, and pleading his exemptions. Such exemptions were also duly claimed by the plaintiff in the Iowa court by affidavit.

No service was had upon the plaintiff in Iowa, nor did he ever enter his personal appearance there in that proceeding.

The court in Missouri, however, entered up against the defendant for the full amount sued for, and refused to recognize or give any faith or credit to the Iowa proceeding then pending.

Upon appeal, this ruling was reversed in the Supreme Court of Missouri, with directions to the court below to grant a stay of execution in the Missouri case until final judgment was rendered in Iowa, in order to protect the garnishee and prevent the collection from it of the same debt by the employe, and again by his creditor.

This is the exact situation in the case at bar, as h
"history has repeated itself."

All the plaintiff in error has ever asked in t
case is just what was given to the Rock Island Ra
way Company in a case almost exactly like this one
its facts by the Supreme Court of Missouri.

Why there should be a different rule applied to t
case is difficult to perceive, either upon principle
authority, as the effect of Judge Withrow's ruling
affirmed in this court, will be to annul a plain a
mandatory provision of the constitution of the Unit
States, as well as to compel the defendant, an innoc
stakeholder, to pay the plaintiff's wages and a la
portion of his debts, too.

For that reason we ask for a reversal of this ju
ment with proper and specific directions to the cou
of Missouri to give full faith and credit in this case
the judgment rendered against this garnishee in Illino

Respectfully submitted,

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Attorneys for Plaintiff in Err